

HOUSE BILL NO. 704

INTRODUCED BY WINDY BOY, KEENAN, JACOBSON, CAFERRO, R. BROWN, BARRETT, GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TIMEFRAMES FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR ~~DECISIONS ON~~ THE RESULTS OF SURVEYS AND INFORMAL DISPUTE RESOLUTION FOR LONG-TERM CARE FACILITIES; AMENDING SECTION 53-6-109, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-6-109, MCA, is amended to read:

"53-6-109. Consistent regulation of long-term care facilities -- rulemaking authority -- timeframes.

(1) In order to provide more consistent regulation of long-term care facilities that provide intermediate and skilled nursing care statewide, the department shall adopt rules in consultation with long-term care provider groups, the long-term care ombudsman, as described in 52-3-603, and appropriate consumer groups ~~by July 1, 2003~~, that:

(1)(a) define the following terms used in the survey and certification process for long-term care facilities that provide intermediate and skilled nursing care:

(a)(i) actual harm;

(b)(ii) potential for more than minimal harm;

(c)(iii) avoidable;

(d)(iv) unavoidable; and

(e)(v) immediate jeopardy;

(2)(b) define an informal dispute resolution process to provide nursing homes with an opportunity to respond to survey findings and deficiency citations that are believed to be made in error. The rules must be consistent with the purpose of informal dispute resolution that is intended to give the provider an opportunity to demonstrate that a deficiency has been applied in error or is a misjudgment of true facts. The objective of the process is to avoid the imposition of unnecessary sanctions and to diminish the need for formal administrative hearings with the state, as provided for in 53-6-108, or the federal government agencies that are responsible for the enforcement of remedies. The process must provide for an objective review of the raised issues by an

individual who is independent of the survey process and who can evaluate the legal sufficiency of the findings of the surveyors. The department shall provide a written determination of the outcome of the informal dispute resolution process within a reasonable time period, not to exceed 45 60 days from the date that the review process is complete DISPUTE IS SUBMITTED TO THE INDIVIDUAL CONDUCTING THE DISPUTE RESOLUTION PROCESS. AS USED IN THIS SUBSECTION (1)(B), "SUBMITTED" MEANS THAT THE PROVIDER AND ANY OTHER PARTY TO THE DISPUTE HAVE PROVIDED THEIR FINAL POSITION STATEMENTS OR ARGUMENTS TO THE INDIVIDUAL CONDUCTING THE DISPUTE RESOLUTION PROCESS, ALONG WITH ANY SUPPORTING DOCUMENTS, WITHIN THE TIME ESTABLISHED BY THAT INDIVIDUAL.

(3)(c) define standards for survey determinations in which the surveyors question the efficacy of orders for drugs and treatments made by a resident's attending physician. The standards must recognize that a written physician's order provides evidence of medical necessity and the appropriateness of the drugs and treatments ordered, unless the survey agency alleges substandard practice by the physician. The standards must provide for the reporting of any substandard practice of a physician to the board of medical examiners by the surveyors. The standards must outline a facility's responsibilities in monitoring drugs and treatments ordered for residents and for consulting with the attending physician as appropriate.

(2) The department shall inform long-term care facilities of the results of any survey, certification survey, complaint survey, or postsurvey revisit within 10 working days of the last date of the survey on the form provided by the centers for medicare and medicaid services for that purpose.

NEW SECTION. SECTION 2. No APPROPRIATION. IT IS THE INTENT OF THE LEGISLATURE THAT THE REQUIREMENTS OF [THIS ACT] BE CONDUCTED WITHIN EXISTING LEVELS OF FUNDING.

NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 2005.

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